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MEMORANDUM

TO: Docket Control

FROM: Thomas M. Broderick
Director
Utilities Division

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2016 MAR 14 PM 12 41

DATE: March 14, 2016

RE: IN THE MATTER OF THE APPLICATION OF DIGITAL
TRANSPORTATION CORPORATION FOR APPROVAL OF A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO
PROVIDE PRIVATE LINE TELECOMMUNICATIONS SERVICES IN
ARIZONA (DOCKET NO. T-20937A-15-0290)

Attached is the Staff Report for the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide the following service:

- Private Line Telecommunications Services

Staff is recommending approval of the Application with conditions.

TMB:MAC:nr\BH

Originator: Matt Connolly

Attachment: Original and Thirteen copies

Arizona Corporation Commission

DOCKETED

MAR 14 2016

DOCKETED BY	<i>KE</i>
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DOCKET NO.: T-20937A-15-0290

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

DIGITAL TRANSPORTATION CORPORATION
DOCKET NO. T-20937A-15-0290

IN THE MATTER OF THE APPLICATION OF DIGITAL TRANSPORTATION
CORPORATION FOR APPROVAL OF A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO PROVIDE PRIVATE LINE TELECOMMUNICATIONS SERVICES
IN ARIZONA

MARCH 14, 2016

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STAFF ACKNOWLEDGMENT

The Staff Report for Digital Transportation Corporation, Docket No. T-20937A-15-0290, was the responsibility of the Staff member listed below. Matt Connolly was responsible for the review and analysis of the Applicant's application for a Certificate of Convenience and Necessity to provide Private Line Telecommunications Services within the State of Arizona, in addition to the petition for a determination that its proposed services should be classified as competitive.



Matt Connolly
Executive Consultant II

1. INTRODUCTION

On August 14, 2015, Digital Transportation Corporation ("DTC" or "Applicant") filed an Application for a Certificate of Convenience and Necessity ("CC&N") to provide facilities-based private line transport telecommunications services within the State of Arizona. The Applicant also petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive.

On August 31, 2015, the Applicant filed a copy of the California Public Utilities Commission ("CPUC") order granting DTC a Certificate of Public Convenience and Necessity in California. On September 11, 2015, Staff issued and docketed a Letter of Deficiency in this matter, informing the Applicant its application had not met the sufficiency requirements under Arizona Administrative Code ("A.A.C.") R14-2-502. On November 13, 2015, the Applicant filed a letter requesting additional time in which to respond to the Letter of Deficiency. On December 22, 2015, the Applicant filed a copy of its Certificate of Good Standing in the State of Arizona. On January 21, 2015, Staff issued and docketed a Letter of Sufficiency, informing the Applicant its application met the sufficiency requirements under A.A.C. R14-2-502. On January 27, 2016, Staff issued its First Set of Data Requests to DTC. Responses to Staff's First Set of Data Requests were received from the Applicant on February 9, 2016.

Staff's review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

DTC is a privately held, limited liability foreign corporation organized under the laws of the State of California. DTC's headquarters is located at 21720 Q Street, Sacramento, California, 95811. The three members of the Applicant's senior management team have a combined (33) thirty-three years of experience in the telecommunications industry.

The Applicant indicated it is in the process of obtaining authority to provide telecommunications services in the State of Nevada¹. The Applicant has already received authority to provide competitive facilities-based and resale local exchange and interexchange services in the State of California.

DTC states that it intends to build and provide dark fiber optic infrastructure to commercial clients in Arizona, primarily focusing on existing clients it currently serves in California. This infrastructure includes buried conduit, fiber optic cables and telecommunications vaults in the sidewalk or manhole vaults in the street. DTC does not anticipate selling dial tone, internet, VoIP or video over these fiber cables.²

DTC further states it intends to supply emergency repair capability for its fiber optic

¹ DTC Response to Staff Data Request STF 1.3.

² DTC Response to Staff Data Request STF 1.5 and 1.9.

infrastructure in cases of a physical breach damage. All emergency personnel will be available through pagers and telephone and will be subcontracted to DTC as part of any contractual agreement with a client who leases fiber optic infrastructure from DTC.³ Customer Service may be reached at 1-916-442-1477. DTC will not have any Arizona employees and will also hire licensed subcontractors for any work DTC intends to have completed in Arizona.⁴

Based on the above information, Staff believes DTC possesses the technical capabilities to provide the services it is requesting the authority to provide in Arizona.

3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

On September 2, 2016, DTC provided confidential unaudited financial statements for year ending 2013 and year ending 2014. The financial statements as of December 31, 2013, list total assets of \$50,208; total equity of negative \$17,792 and a net income of negative \$16,769. The financial statements as of December 31, 2014, list total assets of \$38,636; total equity of negative \$29,364 and a net income of negative \$11,572. The Applicant did not provide notes related to the financial statements.

4. ESTABLISHING RATES AND CHARGES

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

In general, rates for competitive services are not set according to rate of return regulation. In response to item (B-4) of the Application, DTC estimates its expected net book value or fair value rate base after the first twelve months of operation to be \$0.00. The rate to be ultimately charged by the Applicant will be heavily influenced by the market. While Staff considered the fair value rate base information submitted by the Applicant, it did not accord that information substantial weight in its analysis.

The rates proposed by this filing are for competitive services. DTC will not provide service to residential end users. DTC provides non-switched private line services. DTC's customers will be sophisticated commercial business customers that typically negotiate contract rates through a competitive process with the ultimate rates provided on an individual case basis ("ICB") by DTC. Customers who do not need individualized offerings and do not require an ICB contract to meet their needs will be able to purchase services at the rates contained in DTC's proposed tariff.

³ DTC Response to Staff Data Request STF 1.6.

⁴ DTC Response to Staff Data Request STF 1.1.

Staff has reviewed the proposed rates to be charged by the Applicant. DTC's rates are for highly competitive services and the services are targeted for commercial business entities. These entities have ample resources and bargaining power to protect their business interests while negotiating for the best market prices for services. The proposed tariff rates are similar to those charged by other providers of point to point services in Arizona. The rate charged for a service shall not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109. Therefore, Staff believes that DTC's proposed rates are just and reasonable.

5. REVIEW OF COMPLAINT INFORMATION

The Consumer Services Section of the Utilities Division ("Consumer Services") reports that there have been no complaints, inquiries, or opinions filed against DTC from January 1, 2012 to January 26, 2016. Consumer Services also reports that DTC is in Good Standing with the Corporations Division of the Commission. A search of the Federal Communications Commission's website found that there have been no formal or informal complaint proceedings involving the Applicant.

The Applicant stated DTC is currently certificated to provide telecommunications services in California. Staff contacted the CPUC and was informed that DTC has been licensed by the CPUC since 2012 and there are no complaints registered against DTC.

The Applicant states that it has neither had an application for service denied, nor had its authority to provide service revoked in any jurisdiction. Staff did not find any instances of denied applications or revocation of authority to provide service. The Applicant indicated in the Application that neither it, nor any of its officers, directors or partners have been, or are currently involved in any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency or law enforcement agency. Staff has found no instances of any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency or law enforcement agency involving the Applicant or any of its officers, directors or managers.

6. COMPETITIVE SERVICES ANALYSIS

6.1 Private Line Services

DTC proposes to provide private line service. Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant.

6.2 *A Description of the General Economic Conditions that Exist that Make the Relevant Market for the Service One That is Competitive.*

IXCs, ILECs and CLECs each hold a substantial share of the private line market. The Applicant will be entering the market as an alternative provider of private line service and, as such, the Applicant will have to compete with the existing providers of the service in order to obtain customers.

6.3 *The Number of Alternative Providers of the Service.*

IXCs are providers of private line service in the State of Arizona. In addition, ILECs and CLECs also provide private line service.

6.4 *The Estimated Market Share Held by Each Alternative Provider of the Service.*

IXCs, ILECs and CLECs each hold a substantial share of the private line market.

6.5 *The Names and Addresses of any Alternative Providers of the Service That Are Also Affiliates of the Telecommunications Applicant, as Defined in A.A.C. R14-2-801.*

DTC does not have any affiliates that are alternative providers of private line service in Arizona.

6.6 *The Ability of Alternative Providers to Make Functionally Equivalent or Substitute Services Readily Available at Competitive Rates, Terms and Conditions.*

IXCs, ILECs and CLECs have the ability to offer the same services that the Applicant has requested in their respective service territories.

7. RECOMMENDATIONS

The following sections contain Staff recommendations on the Application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

7.1 *Recommendations on the Application for a CC&N*

Staff recommends that Applicant's Application for a CC&N to provide private line telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant comply with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;

3. That the Applicant cooperate with Commission investigations including, but not limited to, customer complaints;
4. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers and local incumbent carriers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis; and
5. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariff pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application.
2. The Applicant shall notify the Commission through a compliance filing within 30 days of the commencement of service to customers; and
3. The Applicant shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

7.2 Recommendation on the Applicant's Petition to Have its Proposed Services Classified as Competitive

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.